

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 AF-06 ARA-06 EA-06 NEA-10 IO-10 OIC-02

CIAE-00 COME-00 DODE-00 DOTE-00 EB-07 FMC-01 INR-07

NSAE-00 CG-00 OFA-01 DLOS-04 L-03 FRB-03 OMB-01

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TRSE-00 CIEP-01 CEA-01 PRS-01 PA-01 USIA-06 /112 W

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TO SECSTATE WASH DC 7757

INFO AMEMBASSY ANKARA

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LIMITED OFFICIAL USE SECTION 01 OF 03 OECD PARIS 16844

E.O. 11652: N/A

TAGS: EFIN, OECD, ETRN, UNTAD, ECON

SUBJECT: OECD COUNCIL DISCUSSION OF UN LINER CODE

REF: USOECD 11977

1. SUMMARY. FRANCE, BELGIUM AND GERMANY INFORMED COUNCIL ON JUNE 26 THAT THEY INTEND TO SIGN UN CONVENTION ON LINER CONFERENCES BEFORE JUNE 30. EACH OF THESE COUNTRIES INDICATED THEY WOULD SIGN WITH DECLARATION TO EFFECT THAT IMPLEMENTATION OF UN CONVENTION WOULD NOT BE CONTRARY TO THEIR OBLIGATIONS UNDER THE TREATY OF ROME OR OECD INVISIBLES CODE. SPAIN ALSO STATED IT WOULD SIGN AT SOME FUTURE DATE. UK PROPOSAL FOR AD HOC LEGAL GROUP TO CLARIFY NATURE OF OBLIGATIONS UNDER UN CONVENTION WAS REJECTED BY ALL POTENTIAL SIGNATORIES OF CONVENTION. SECGEN PROPOSED FORMULA FOR DRAFT ENTRY IN COUNCIL MINUTES WHICH PUBLICLY FORMALIZES INTENTION OF SIGNATORIES NOT TO DISCRIMINATE AGAINST OECD NON-SIGNATORY COUNTRIES WHEN IMPLEMENTING CONVENTION. ACTION REQUESTED: WASHINGTON APPROVAL OF SECGEN'S APPROACH AND SUGGESTED CHANGES TO HIS DRAFT ENTRY IN MINUTES. END SUMMARY

2. AS ARRANGED PRIOR TO MEETING, SWEDEN LED OFF DISCUSSION WITH FORCEFUL PLEA THAT COUNTRIES SHOULD NOT SIGN UN CONVENTION IN VIEW OF EVIDENT INCOMPATIBILITY WITH OECD INVISIBLES CODE AND INCREASE OF PROTECTIONISM
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IN AREA OF MARITIME TRANSPORT. SWEDES ALSO NOTED DANGER THAT CREDIBILITY OF OTHER OECD AGREEMENTS COULD BE UNDERMINED IF DIFFERENT INTERPRETATIONS OF INVISIBLES CODE CAN BE MADE TO SUIT INDIVIDUAL NATIONAL INTERESTS. THEY WERE STRONGLY SUPPORTED BY NORWAY AND U.S.

3. EC COMMISSION RREPORTED ON EC COUNCIL OF FOREIGN MINISTERS MEETING JUNE 24 AND HINTED THAT COMMISSION

MIGHT TAKE LEGAL ACTION IF IT THOUGHT THAT SIGNATORIES OF UN CONVENTION WERE NOT RESPECTING THEIR COMMITMENTS UNDER TREATY OF ROME. FRANCE, BELGIUM AND GERMANY THEN STATED THEIR INTENTION TO SIGN CONVENTION BEFORE JUNE 30 WITH RESERVATION THAT SUCH SIGNATURE WAS SUBJECT TO APPROVAL BY LEGISLATURES AND DECLARATION THAT IMPLEMENTATION WOULD IN NO WAY CONFLICT WITH EXISTING OBLIGATIONS UNDER TREATY OF ROME OR OECD INVISIBLES CODE. SPAIN SAID IT WOULD INFORM COUNCIL SUBSEQUENTLY OF PRECISE DATE ON WHICH IT INTENDED TO SIGN.

4. IT IS NOT CLEAR WHETHER DECLARATIONS BY SIGNATORIES ARE INTENDED TO BE FORMAL RESERVATIONS. FRENCH DECLARATION ACCOMPANYING SIGNATURE OF CONVENTION WILL STATE THAT SIGNATURE IS MADE UNDER RESERVE FOR RATIFICATION BY FRENCH PARLIAMENT, AND THAT CONVENTION WILL BE PRESENTED TO PARLIAMENT UNDER EXPRESS RESERVE THAT IMPLEMENTATION SHOULD NOT CONFLICT WITH FRANCE'S OBLIGATIONS UNDER TREATY OF ROME OR OECD INVISIBLES CODE. (TEXT OF FRENCH STATEMENT FOLLOWS SEPTEL.)

5. UK PROPOSED AGAIN THAT AD HOC LEGAL GROUP BE ESTABLISHED TO CONSIDER OBLIGATIONS WHICH COUNTRIES WOULD BE EXPECTED TO UNDERTAKE IF THEY BECAME SIGNATORIES OF UN CONVENTION. IT WOULD STILL BE

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NECESSARY TO EXAMINE LEGAL ISSUES INVOLVED EVEN AFTER
SOME OECD COUNTRIES HAVE SIGNED CONVENTION.

6. U.S. REP (KATZ) EXPRESSED REGRET AT DECISIONS TO
SIGN CONVENTION. HE RECALLED STATEMENTS BY U.S. REP AT
PREVIOUS MEETING OF COUNCIL (REFTEL) AND ASSOCIATED

HIMSELF WITH SWEDISH AND NORWEGIAN STATEMENTS. HE ARGUED IN FAVOR OF FURTHER EFFORTS AT LEGAL CLARIFICATION, POINTING OUT THAT SIGNATORIES' ANNOUNCEMENT OF INTENTION TO ACCOMPANY SIGNATURE WITH DECLARATION RAISED A NUMBER OF NEW LEGAL QUESTIONS. FIRST, WAS IT INTENTION OF SIGNATORIES TO LODGE A FORMAL RESERVATION? SECOND, DID DECLARATION ACCOMPANYING SIGNATURE MEAN THAT NON-SIGNATORY COUNTRIES HAVE LEGAL ASSURANCE THAT RIGHTS THEY ENJOY VIS-A-VIS SIGNATORIES UNDER OECD INVISIBLES CODE WOULD NOT BE IMPAIRED BY IMPLEMENTATION OF DISCRIMINATORY PROVISIONS (E.G. 40-40-20 CLAUSE) OF UN CONVENTION. TO CLARIFY THESE POINTS U.S. COULD SUPPORT UK PROPOSAL FOR LEGAL GROUP BUT WOULD GO ALONG WITH OTHER TECHNIQUES FOR GETTING LEGAL CLARIFICATION BY REQUESTING OPINION FROM OECD LEGAL ADVISOR AND FROM UN LEGAL ADVISOR.

7. BEYOND LEGAL QUESTION, U.S. REP NOTED FOLLOWING POLICY POINT IN ADDITION TO THOSE MENTIONED EARLIER BY U.S. AND OTHER SPEAKERS. ORIGINAL MOTIVATION FOR UN LIMITED OFFICIAL USE

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CONVENTION WAS TO ASSIST LDC'S IN MARITIME FIELD, BUT DC'S HAD BEEN UNABLE TO CONCERT THEIR POSITIONS. AS A RESULT, MEMBER COUNTRIES OF OECD WERE FACED WITH DIVISIVE POLITICAL/ECONOMIC ISSUE, AND POSSIBILITY THAT REAL ECONOMIC DAMAGE WOULD BE CAUSED TO SOME OECD MEMBERS BY ACTIONS OF OTHER MEMBER COUNTRIES. THIS INCIDENT POINTS UP WISDOM OF RECENT HIGH-LEVEL DECISION IN OECD TO ESTABLISH NORTH/SOUTH GROUP TO REVIEW AND CONCERT POLICIES AND ACTIONS OF DC'S ON BEHALF OF LDC'S. IT WAS IMPORTANT THAT IN HELPING LDC'S, OECD COUNTRIES AVOID WEAKENING THE FABRIC OF THEIR OWN POLITICAL AND ECONOMIC COOPERATION.

8. ALL POTENTIAL SIGNATORIES OF CONVENTION TOOK POSITION THAT FURTHER DISCUSSION BY LEGAL EXPERTS WOULD ONLY RESULT IN SAME DIVISION OF OPINION AS HAD ALREADY BEEN DEMONSTRATED IN INVISIBLES COMMITTEE. SECGEN ADDED THAT LEGAL ADVISOR HAS NOTED THAT MEMBER COUNTRIES ARE DIVIDED ON LEGAL IMPLICATIONS OF SIGNATURE AND NOTHING WOULD BE GAINED BY ASKING OECD LEGAL ADVISOR TO ACT AS ARBITRATOR. SWITZERLAND EXPRESSED VIEW THAT TIME HAD COME TO SEEK PRACTICAL SOLUTIONS NOW THAT SEVERAL COUNTRIES HAD INDICATED THEY WOULD SIGN AND WOULD SEEK TO AVOID CONFLICTS WITH THEIR OTHER INTERNATIONAL OBLIGATIONS.

9. SECRETARY-GENERAL CONCLUDED THAT THERE WAS INSUFFICIENT SUPPORT FOR ESTABLISHMENT OF AD HOC LEGAL

GROUP, OR FOR ANY OF THE OTHER FORMULAS FOR SEEKING
LEGAL CLARIFICATION. HE AGREED ON NEED TO HAVE
PRACTICAL CONCLUSION TO THIS ISSUE IN VIEW OF ANNOUNCE-
MENT OF INTENTION TO SIGN. HE REMINDED COUNCIL THAT
INVISIBLES COMMITTEE HAD UNANIMOUSLY RECOGNIZED
POSSIBILITIES OF CONFLICT BETWEEN UN CONVENTION AND
OECD CODE AND HAD ACCEPTED THAT OECD CODE SHOULD BE
CONTROLLING OBLIGATION IN EVENT OF SUCH CONFLICTS. HE
NOTED IMPLICATION OF THIS STATEMENT WAS THAT MEMBER
COUNTRIES ADHERING TO UN CONVENTION WOULD NOT TAKE
MEASURES CONTRARY TO OECD INVISIBLES CODE WHEN
IMPLEMENTING SUCH CONVENTION. HE THEREFORE PROPOSED
THAT DRAFT ENTRY IN COUNCIL MINUTES SHOULD READ AS
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FOLLOWS:

"THE COUNCIL:

(A) NOTED THE REPORT C(74)235 BY THE COMMITTEE FOR
INVISIBLE TRANSACTIONS AND THE COMMENTS THEREON BY THE
PAYMENTS COMMITTEE (C(75)1);

(B) NOTED THAT MEMBER COUNTRIES, IF THEY BECAME PARTIES
TO THE UN CONVENTION ON A CODE OF CONDUCT OF LINER
CONFERENCES, WILL ABSTAIN FROM IMPLEMENTING SUCH
CONVENTION BY MEASURES CONTRARY TO NOTE 1 OF THE OECD
CODE OF LIBERALIZATION OF CURRENT INVISIBLE OPERATIONS."

10. SECGEN SUGGESTED THAT MEMBER GOVERNMENTS REFLECT ON
THIS FORMULA AND DISCUSS IT IN EXECUTIVE COMMITTEE.
FRENCH DELEGATE AGREED TO REFER SUGGESTION TO HIS
GOVERNMENT BUT ASKED THAT MATTER SHOULD BE TAKEN UP

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AGAIN IN COUNCIL BEFORE REFERRAL TO EXECUTIVE COMMITTEE (OF WHICH HE IS CHAIRMAN). UK DEL SUGGESTED THAT COUNTRIES SHOULD BE GIVEN TIME TO CONSIDER APPROPRIATE FORMULATIONS FOR DRAFT ENTRY. UK STRESSED THAT DRAFT ENTRY MUST CALL ATTENTION IN SOME WAY TO EXISTENCE OF DIFFERING OPINIONS AMONG OECD MEMBERS ON QUESTION OF COMPATIBILITY. SECGEN AGREED TO CONSULT DELEGATIONS OVER NEXT FEW DAYS BEFORE CIRCULATING TEXT OF DRAFT ENTRY AND WILL RESCHEDULE COUNCIL DISCUSSION OF DRAFT ENTRY AT MEETING IN MID-JULY.

11. IN MISSION'S VIEW, FORMULA ALONG LINES SUGGESTED BY SECGEN HAS MERIT OF PUBLICLY FORMALIZING SIGNATORIES' INTENTION NOT TO DISCRIMINATE AGAINST OTHER NON-SIGNATORY OECD MEMBER COUNTRIES. ACTION REQUESTED: WE ANTICIPATE INTENSIVE CONSULTATIONS WITH OTHER DELEGATIONS IN NEXT FEW DAYS, AND WOULD WELCOME ANY COMMENTS ON SECGEN'S PROPOSED TEXT. THERE MAY BE OTHER CHANGES TO THIS TEXT RESULTING FROM CONSULTATIONS WITH OTHER DELEGATIONS, BUT WE NEED URGENT CONFIRMATION THAT WASHINGTON AGREES TO THIS APPROACH.
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